

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
March 16, 2006 Session

**TIM McKEITHEN, ET UX. v. RICHARD E. HILL**

**Appeal from the Circuit Court for Davidson County  
No. 04C-3291     Barbara Haynes, Judge**

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**No. M2005-01535-COA-R3-CV - Filed April 28, 2006**

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This appeal involves an automobile accident that occurred on January 19, 2001. Suit filed in the General Sessions Court on January 2, 2002, was non-suited March 19, 2002, and re-filed in the General Sessions Court on March 17, 2003. It was then transferred to the Circuit Court by agreement because Plaintiffs' *ad damnum* exceeded the statutory jurisdiction of the General Sessions Court. Plaintiffs then on November 13, 2003, non-suited in Circuit Court and re-filed the present action on November 12, 2004. The trial court granted summary judgment because of the expiration of the statute of limitations. We affirm the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

WILLIAM B. CAIN, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and FRANK G. CLEMENT, JR., J., joined.

Karl D. Warden, Nashville, Tennessee, for the appellants, Tim McKeithen and Dixie McKeithen.

Julie Bhattacharya Peak, Nashville, Tennessee, for the appellee, Richard E. Hill.

**MEMORANDUM OPINION<sup>1</sup>**

There is no dispute as to the controlling facts of this case. Tim McKeithen was operating his automobile on Interstate 65 South near the Wedgewood exit in Davidson County, Tennessee, when he came upon an accident scene occurring in front of him. Richard Hill was operating his automobile in a southerly direction on Interstate 65 South to the rear of Tim McKeithen. Hill

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<sup>1</sup>Tenn. R. Ct. App. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

collided with McKeithen, striking the McKeithen car from the rear and resulting in alleged injuries to Tim McKeithen. On January 2, 2002, Tim McKeithen and his wife, Dixie McKeithen, filed suit against Mr. Hill with Dixie McKeithen claiming loss of consortium damages.

The procedural history of the case follows eight steps on its journey here:

1. The accident occurred January 19, 2001;
2. Plaintiffs filed their General Sessions suit on January 2, 2002;
3. Plaintiffs voluntarily dismissed the General Sessions claim on March 19, 2002;
4. Plaintiffs re-file their claim in General Sessions on March 17, 2003;
5. The case was removed to the Circuit Court June 16, 2003;
6. Plaintiffs take voluntary dismissal November 6, 2003;
7. Order of Dismissal filed November 13, 2003;
8. Plaintiffs re-file their claim in Circuit Court November 12, 2004.

Plaintiffs/Appellants concede that the statute of limitations has expired, unless their cause of action is preserved by certain provisions of Tennessee Code Annotated section 16-15-732. They state their position with clarity in their brief.

Tenn.Code Ann. § 16-15-732 acts to negate all defaults or other judgments entered at the general sessions level.

(a) At any time at least three (3) or more business days prior to the scheduled trial date of a civil action commenced in general sessions court, any defendant in such action may apply to have such action and all the papers thereof removed to a court having jurisdiction of appeals from courts of general sessions. *A case properly removed pursuant to this section shall be tried by such appellate court in the same manner as appeals from general sessions court civil actions are currently tried, except there shall be no default or other judgment entered at the general sessions level*, and except that a case removed pursuant to this section shall not be subject to any monetary jurisdictional limit that would have applied in the general sessions court if the case had not been removed.

Tenn.Code Ann. § 16-15-732(a) emphasis added.

By statute, the non-suit entered in General Sessions ceased to exist for the Circuit Court when the matter was removed from General Sessions. Had the case been appealed from an adverse decision, the question before this court might be different. The case was not appealed and the statute governing removals took effect. The non-suit ceased to exist as a matter of law.

Tenn.Code Ann. § 28-1-105(a), the savings statute, provides that:

(a) If the action is commenced within the time limited by a rule or statute of limitation, but the judgment or decree is rendered against the plaintiff upon any ground not concluding the plaintiff's right of action, or where the judgment or decree is rendered in favor of the plaintiff, and is arrested, or reversed on appeal, the plaintiff, or the plaintiff's representative and privies, as the case may be, may, from time to time, subsequently commence a new action within one (1) year after the reversal or arrest. Actions originally commenced in general sessions court and recommenced pursuant to this section in circuit or chancery court shall not be subject to the monetary jurisdictional limit originally imposed in the general sessions court.

Tenn.Code Ann. § 28-1-105(a).

The savings statute provides that actions which were initially timely filed and then later non-suited, will not be barred by a statute of limitation if re-filed within a year of the applicable non-suit. In the case of removals from general sessions court, Tenn. Code Ann. § 16-15-732(a) requires a circuit court to ignore judgments, including non-suits, which occurred in the general sessions court. Working together, the statutes require a circuit court to consider only non-suits which have taken place in the circuit court when applying the savings statute, Tenn.Code Ann. § 28-1-105(a).

The case at bar is materially indistinguishable from *Holiday v. Shoney's South, Inc.*, 42 S.W.3d 90 (Tenn.Ct.App.2000). The history of the litigation in *Holiday* is set forth in the opinion of this Court by footnote.

The limitations period for a personal injury claim in Tennessee is one year from the date on which the cause of action accrues. *See* Tenn.Code Ann. § 28-3-104(a)(1) (Supp.1999). In the case at bar[,] Ms. Holiday's cause of action accrued on November 29, 1987, the date on which she was allegedly injured on Shoney's premises. In January of 1988, Ms. Holiday timely filed an action against Shoney's in general sessions court but later caused the action to be dismissed by voluntary non-suit on January 11, 1989. On January 8, 1990, Ms. Holiday re-filed the action in circuit court. Although the circuit court action was filed more than one year after November 29, 1987, it was nevertheless rendered timely by Tennessee's savings statute, which allows a timely filed action that has been non-suited to be

recommenced within one year of the date on which the non-suit was taken. *See* Tenn.Code Ann. § 28-1-105(a) (Supp.1999). After non-suiting this first circuit court action, Ms. Holiday filed a second complaint against Shoney's in circuit court on March 24, 1995. This second circuit court complaint was not filed within the applicable limitations period or within one year of January 11, 1989, the date on which Ms. Holiday took a voluntary non-suit of her general sessions action. Thus, the trial court granted Shoney's motion to dismiss Ms. Holiday's second circuit court complaint. *See Payne v. Matthews*, 633 S.W.2d 494, 495-96 (Tenn.Ct.App.1982).

42 S.W.3d at 92.

Appellants freely acknowledge that *Holiday* is controlling unless their interpretation of certain provisions of Tennessee Code Annotated section 16-15-732 applies to save the case from the statute of limitations. The construction sought by Appellants is innovative, but unconvincing. Tennessee Code Annotated 16-15-732 is derived almost entirely from Chapter 732 of the Public Acts of 1988 with the only significant amendment thereto being Chapter 690 of the Public Acts of 1994 which declared the Act to be remedial in nature.

The different parts of a statute reflect light upon each other, and statutory provisions are regarded as *in pari materia* where they are parts of the same Act. Hence, a statute should be construed in its entirety, and as a whole. All parts of the Act should be considered, and construed together. It is not permissible to rest a construction upon any one part alone, or upon isolated words, phrases, clauses, or sentences, or to give undue effect thereto. The legislative intention, as collected from an examination of the whole as well as the parts of a statute, is not to be defeated by the use of particular terms.

73 AmJur 2d Statutes, § 105(2005); *Worrall v. Kroger Co.*, 545 S.W.2d 736, 738 (Tenn.1977) (statute to be construed as a whole without forced or subtle construction). *See also Town of Mt. Carmel v. City of Kingsport*, 397 S.W.2d 379, 382 (Tenn.1965).

Considering Tennessee Code Annotated section 16-15-732 in its entirety rather than limiting consideration to subsection (a) thereof makes it clear that a defendant's application for removal is what is contemplated by the statute.

b) Any *defendant* seeking to remove an action pursuant to subsection (a) shall file with such application an affidavit stating that the *defendant* has a substantial defense to the action and/or that the *defendant's* defense will be of such a complex or expensive nature that the interests of justice require that the *defendant* not be required to present such defense at the general sessions level. The affidavit shall state the grounds of such defense and why the affiant believes it to be sufficiently substantial, complex or expensive to merit the removal of such case. The affidavit and

application shall also be accompanied by a cost bond sufficient to defray all costs which have accrued prior to the time application for removal is made.

(c)(1) If the general sessions judge finds that a *defendant's* defense is substantial, complex or expensive to present, and that the *defendant* has posted a sufficient cost bond, the judge shall order the action removed to the court which would have jurisdiction of an appeal, if the action had been tried in general sessions court. The judge shall direct the clerk to promptly transmit the papers in the action to the clerk of the court to which such action is removed.(2) If the judge finds the defense will not be substantial, complex or expensive or that the cost bond is not sufficient, the judge shall deny the application and proceed to try the action.

(d) If an action is removed pursuant to this section, in no event shall an objection to venue be considered by the circuit court, unless raised by a *defendant* in the *defendant's* affidavit in support of removal filed in the general sessions court.

T. C. A. § 16-15-732 (b-d) (emphasis added).

The basis contemplated by the statute is not that the amount sued for exceeds the jurisdictional limits of the general sessions court, but rather that a defendant has a substantial defense to the action and/or that such defense has such a complex or expensive nature that the interests of justice require that the defendant not be required to present such defense at the general sessions level. Such are the dictates of subsection (b) of the statute. Subsection (c) contemplates a substantive consideration by the general sessions judge of the application to remove filed by a defendant. If the general sessions judge finds that the defense is substantial, complex or expensive and that defendant has posted sufficient bond, the judge “shall” order the action removed to the circuit court. If the general sessions judge finds that the defense will not be substantial, complex or expensive or that the cost bond is not sufficient, “the judge shall deny the application and proceed to try the action.”

Tenn.Code Ann. § 16-15-732(c)(2).

The statute relied upon by Appellant does not contemplate removal by agreement of the parties and the general sessions judge based solely upon a determination that the *ad damnum* alleged is beyond the monetary jurisdictional limit of the general sessions court. Appellants admit that the only way this case can be saved from the expiration of the statute of limitations is to construe the language of subsection (a) which states, “except there shall be no default of other judgment entered at the general sessions level . . . to render void and of no force and effect all actions prior to the removal that were taken in the general sessions court.” Such a construction is strained when subsection (a) is considered in isolation of the remainder of the statute, and such a construction is completely implausible when the entirety of the statute is considered in the context of what was done in this case. The judgment of the trial court is affirmed, and costs of the cause are assessed to Appellants.

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WILLIAM B. CAIN, JUDGE